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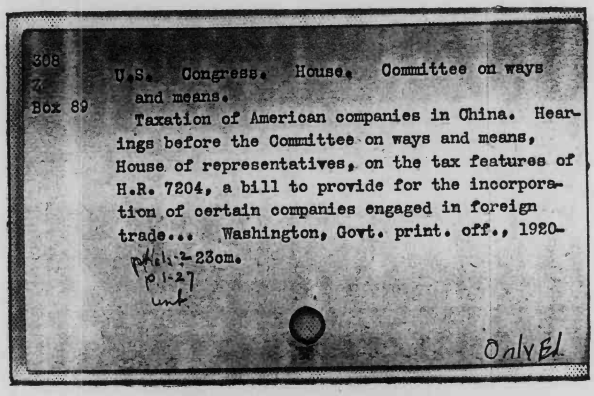
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Part 1

Taxation of American Companies in China

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HEARINGS

BEFORE THE

COMMITTEE ON WAYS AND MEANS

HOUSE OF REPRESENTATIVES

ON THE

Tax Features of H. R. 7204

A BILL TO PROVIDE FOR THE INCORPORATION OF CERTAIN COMPANIES ENGAGED IN FOREIGN TRADE

FRIDAY, DECEMBER 17, 1920

WASHINGTON
GOVERNMENT PRINTING OFFICE
1920

COMMITTEE ON WAYS AND MEANS.

HOUSE OF REPRESENTATIVES.

SIXTY-SIXTH CONGRESS, THIRD SESSION.

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NICHOLAS LONGWORTH, Ohio.
WILLIS C. HAWLEY, Oregon.
ALLEN T. TREADWAY, Massachusetts.
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JOHN N. GARNER, Texas.
JAMES W. COLLIER, Mississippi.
CLEMENT C. DICKINSON, Missouri.
WILLIAM A. OLDFIELD, Arkansas.
CHARLES R. CRISP, Georgia.
JOHN F. CAREW, New York.
WHITMELL P. MARTIN, Louisiana.

ERNEST W. CAMP, *Clerk.*

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TAXATION OF AMERICAN COMPANIES IN CHINA.

COMMITTEE ON WAYS AND MEANS,
HOUSE OF REPRESENTATIVES,
Friday, December 17, 1920.

The committee met at 10 o'clock a. m., Hon. Joseph W. Fordney (chairman) presiding.

The CHAIRMAN. Gentlemen, Congressman Dyer wants to be heard a few minutes on the tax features of H. R. 7204. There have been appointments arranged for some other gentlemen to be heard to-day, but we will hear Mr. Dyer and his friends for 15 minutes.

STATEMENT OF HON. LEONIDAS C. DYER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSOURI.

Mr. DYER. Mr. Chairman and gentlemen of the committee, my purpose in coming before your committee this morning is to have you listen for a short time to a gentleman who is engaged in business in China. I have a bill pending before the Judiciary Committee, of which I am a member, for the purpose of creating Federal incorporations for China. That bill has been pending in that committee for some time, and during the last summer I was in China and investigated the matter somewhat carefully and took the statements of a great many Americans who are doing business in the Orient as to the necessity for passing a law to grant Federal charters to Americans to do business in China.

I shall not take up the time of the committee myself explaining the necessity of the bill at this time, but there is one provision that I placed in this bill which was to exempt these proposed corporations from taxes to the Federal Government. The purpose of that provision I will not endeavor to explain in detail, but its object was, in a few words, to give Americans the same opportunity to do business in China that British and other governments give to their nationals who are not taxed. Our committee, the Judiciary Committee, of course, is unwilling to present a bill to the House with this provision in it without it first having been considered by this honorable committee and its approval had. So the intent has been to come to this committee and obtain its advice and approval of that provision before we would draft it into the bill.

Mr. HAWLEY. What provision is that, the tax exempt provision?

Mr. DYER. Yes.

Mr. HAWLEY. Exempting citizens of the United States from taxation when their money is invested in American corporations doing business in China?

Mr. DYER. Some time later I desire to have a hearing before this committee, when I would have a number of witnesses, business men

and others, testify as to the necessity for the exemption from taxes of these proposed companies.

Mr. YOUNG. That bill is pending before the committee of which you are a member?

Mr. DYER. The Committee on the Judiciary, yes. It has been there for two years. I am the author of the bill now known as H. R. 7204.

Mr. Chairman, Mr. H. H. Arnold, who is president of the American Chamber of Commerce of Shanghai, China, is here. He is in the United States in connection with the business which he represents there, and I asked him to come to Washington from New York this morning to confer with him touching this legislation, and through the kindness of the chairman I now have the honor to present him to the committee and he will talk to you a few moments upon the necessity for this legislation.

The CHAIRMAN. We will be glad to hear you, Mr. Arnold.

STATEMENT OF MR. H. H. ARNOLD, PRESIDENT OF THE CHAMBER OF COMMERCE, SHANGHAI, CHINA.

Mr. GARNER. What is your business, Mr. Arnold?

Mr. ARNOLD. I am president of the Chamber of Commerce of Shanghai and vice president of the Anderson Mining Co., engineers, contractors, importers, and exporters.

Mr. GARNER. You are an importer and exporter in Shanghai? Is that what you mean? Not in this country?

Mr. ARNOLD. We export from China and the same transaction is importing into the United States; we import into China and the same transaction is exporting from the United States.

Mr. GARNER. You buy goods in this country and send them to China?

Mr. ARNOLD. Yes. The American firm in China is in competition in securing the trade of China, which is developing rapidly and which has very great potentialities, particularly with England, France, and Japan, and on account of our being under the privileges of extraterritoriality there special laws have been made treating with commerce. England, France, and Japan, our principal competitors, all have special privileges or specially favorable treatment of firms operating there.

The CHAIRMAN. Have you copies of those charters that you could furnish the committee?

Mr. ARNOLD. They are not at all easy to get. The American Chamber of Commerce in China has been trying to get them for some time.

The CHAIRMAN. If we are to assist you, we should have copies of those laws, in order to ascertain what advantages other countries have over American corporations.

Mr. ARNOLD. The principal things that we want, that they don't have, is excess profits tax exemption, and that is one of the most important points. I will speak of that.

The trade fluctuations, the ups and downs, of trade out there are very much greater than they are over here. It is not unusual for a company to make all the profit out of seven years' trading in one or two years and other years have very heavy losses, or small

losses, and unless the company can lay by a surplus they haven't much possibility of being permanent. The British firms, the French firms, the old well-organized ones, have gone right through the war and are practically as strong to-day as they were before the war, although their trading was much smaller and they traded in American goods where they had to in order to keep going, and the principal reason for that is because they have built up the enormous surpluses.

Their surplus in a great many cases is many times their capital, and the American firm which is not able to do that will not be able to go through periods such as we have to-day. There are 233 American companies resident members of the American Chamber of Commerce in China this year, and the prospects are that this very serious difficulty we are having now, the drop in exchange, the withdrawal of finances, will probably take away two-thirds of those companies.

What I am asking for is that, if you can, some arrangement should be made to put us on an equal basis to compete with foreign competitors in getting business.

Mr. HAWLEY. Are the English companies engaged in business in China exempt from all taxation on the money invested in the business they are doing in China or only for part of it?

Mr. ARNOLD. Those incorporated under the Hongkong ordinances are, except for a few fees. They are not really taxes.

Mr. HAWLEY. Are they exempt from taxation in China or taxation in England?

Mr. ARNOLD. They are exempt from corporation taxes.

Mr. HAWLEY. In England?

Mr. ARNOLD. Well, these companies are in China. They do not pay taxes to China, except on lands and property, and they do not pay taxes to England on the part of the business conducted in China.

Mr. GREEN. I see no way by which England could tax a corporation which did business in China and was incorporated there. Are they incorporated in China?

Mr. ARNOLD. They have a special law called the Hongkong ordinances. They are special laws which enable them to incorporate entirely under the British jurisdiction, absolutely as British companies, and with the British consular protection and their court assistants, and they remain strictly a British company.

Mr. DYER. Hongkong is British territory, you know.

Mr. GREEN. That is what puzzled me about the matter.

Mr. ARNOLD. But these ordinances affect companies operating throughout China—British companies.

Mr. GREEN. Are you certain that those which are incorporated in British territory are free from the British corporation taxes?

Mr. ARNOLD. Those that are incorporated in Hongkong, under the Hongkong ordinances, or operating in China, I am sure they are.

Mr. HAWLEY. That is, that part of their capital which is used in the trading business in China?

Mr. ARNOLD. They always have a separate company for the trading business in China, and it would be necessary in this case for us to have a Federal incorporated company for trade in China. They would have to also trade with the United States in regard to buying and selling, but their principal place of business would have to be there.

Mr. GREEN. Does this Hongkong ordinance permit Amreican citizens to incorporate under it?

Mr. ARNOLD. Quite a number of American firms did incorporate under these laws, and recent orders in council required that all of the officials—that the directorate and all of the officers of the company—should be British citizens.

Mr. GREEN. So that stopped anything further in that line?

Mr. ARNOLD. It very seriously complicated American business out there which was so incorporated.

Mr. HAWLEY. And they occupy the stand that they will not allow American citizens to be officers in the British companies?

Mr. ARNOLD. Not British companies under the Hongkong ordinances, except that if they make their head office in Hongkong, so that they are directly under the British courts and so that they are not under the privileges of exterritoriality under their own courts, then they will permit them to be. Do you get the point?

Mr. HAWLEY. Yes.

Mr. ARNOLD. If they are living in Hongkong they can be American officers, but any place else they can not.

Mr. HAWLEY. Let me see if I understand the statement you made a moment ago. You said that an American company—if the proposal you submit here is agreed to—would need a charter to do business in the interior of China. Do I understand that they need also another charter in order to do business of exporting and importing with the United States?

Mr. ARNOLD. No, sir.

Mr. HAWLEY. The same status does for both?

Mr. ARNOLD. The same status; yes.

Mr. HAWLEY. Now, do you propose that the income from all the money invested in your enterprises in China, whether it is for trading in China or with the United States, shall be exempted from corporation taxes and excess-profits taxes?

Mr. ARNOLD. All we want is that we will be put on an equal footing with the other people.

Mr. HAWLEY. Of course, we want to know what you think would be an equal footing.

Mr. ARNOLD. I think it is rather hard to draw a line there.

Mr. GARNER. Up to date you have not suggested the repeal of any law except the excess-profits law. Now, what do you mean when you say you want to put them on an equality with everybody else? What is an equality?

Mr. ARNOLD. Equality is practically freeing them from any corporation tax or excess-profits tax on the business conducted in China.

Mr. GARNER. You never have stated that before.

The CHAIRMAN. Then, you desire more than the excess-profits tax exemptions; you desire also exemption from corporation taxes?

Mr. GARNER. Income tax and everything else?

Mr. ARNOLD. Not individual income tax.

The CHAIRMAN. Now, let me see if we understand you. You want to be free from corporation taxes?

Mr. ARNOLD. Yes.

The CHAIRMAN. That is more than excess-profits tax, you know. That is the corporation income. You want to be freed from all of them?

Mr. ARNOLD. I don't know enough to know exactly to what our competitors are having—what other nations are giving to their companies, but we believe that in order to put us on an equal footing we would have to be freed from all corporation taxes, except such things as registration fees.

Mr. HAWLEY. In your judgment, what will happen if you are not granted this privilege?

Mr. ARNOLD. We will never be able to build up American companies out there that are nearly as strong as our foreign competitors, and therefore will not get our share of the business.

Mr. HAWLEY. And if you want to continue in business you will have to take out English charters with English officials in charge of your corporation?

Mr. ARNOLD. We can not very well take English charters.

Mr. OLDFIELD. Unless you become British subjects?

Mr. ARNOLD. There have been a great many different ways of doing it, none of which have been satisfactory and none of which has given American firms the dignity of the position that they need in dealing with the Chinese. Every subterfuge which has been used to accomplish this has weakened the standing of American firms in the eyes of the Chinese.

Mr. WATSON. Do you know the amount of money Americans have invested in these industries and corporations?

Mr. ARNOLD. It is not very large. It is just beginning.

Mr. WATSON. Is it as much as $100,000,000?

Mr. ARNOLD. Americans can not invest at present in Chinese public utilities.

Mr. WATSON. No; I mean how much money have American corporations invested in trading companies?

Mr. ARNOLD. In trading companies, manufactures, etc.? A very rough, hasty estimate would be $50,000,000.

Mr. WATSON. How much has England invested?

Mr. ARNOLD. I should think at least 20 times as much.

Mr. WATSON. Twenty times as much as we have?

Mr. ARNOLD. Yes.

The CHAIRMAN. Are there any Chinese corporation taxes?

Mr. ARNOLD. None that affect the American. We are out there entirely under American law.

The CHAIRMAN. You are not subject to Chinese taxes at all?

Mr. ARNOLD. Except land taxes, transient taxes, customs taxes.

The CHAIRMAN. Land taxes, you say?

Mr. ARNOLD. Yes.

The CHAIRMAN. And no other taxes?

Mr. ARNOLD. No personal, income, or corporation taxes.

The CHAIRMAN. What other taxes, if any, are you subject to?

Mr. ARNOLD. From the Chinese?

The CHAIRMAN. Yes.

Mr. ARNOLD. If you are in strictly Chinese territory——

The CHAIRMAN. What taxes do you pay in Shanghai?

Mr. ARNOLD. Principally land and property taxes and just incidentals like automobile taxes—no corporation taxes. And in China proper we have the Chinese land tax, the import-revenue taxes.

The CHAIRMAN. But you are not in China proper, you said?

Mr. ARNOLD. No; but our business is.

The CHAIRMAN. What does your business pay in the locality in which it is situated? Whether in English territory or in Chinese territory, what do you pay there now to the Chinese Government or to any other Government?

Mr. ARNOLD. We pay consular taxes to the municipal council of Shanghai for our local Shanghai business, and for our business in the Chinese cities—offices in the Chinese cities—we pay land taxes and import-revenue and transit taxes.

The CHAIRMAN. What do you mean by "land taxes"—taxes on land that you own there?

Mr. ARNOLD. Yes, sir.

The CHAIRMAN. Real estate taxes?

Mr. ARNOLD. On lands that we lease. It is not owned.

The CHAIRMAN. If you lease it and obligate yourself to pay the taxes upon it, you pay that?

Mr. ARNOLD. There is a Government tax on that. Could I make this point again? It is not a question of how much the Chinese charges of the taxes, it is the fact that we pay so much more to our Government than our competitors do; and particularly the excess-profits tax prevents us from laying by the reserve necessary to carry through continuous business out there through the fluctuations of exchange, prices of commodities, and other factors that affect foreign trade.

The CHAIRMAN. Suppose we should repeal the excess-profits tax, what relief would that give you?

Mr. ARNOLD. That would be the most important assistance we could have.

Mr. GARNER And if we repeal the excess-profits tax we would be entirely ignorant as to what other laws handicap you as against your competitors, so if you expect any relief other than excess-profits taxes you had better give us some data that you don't seem to have.

Mr. ARNOLD. We will make every effort to get that, sir.

The CHAIRMAN. There might be other corporation taxes imposed in place of excess-profit taxes which would have the same effect as the excess-profits tax, and you would want relief from those taxes as well?

Mr. ARNOLD. Yes, sir.

Mr. DYER. Mr. Chairman, the British Government does not tax its nationals in these incorporated companies under British law at all for the business done in China, and that is so in an indirect way with other nationals.

Mr. GARNER. Mr. Dyer, don't you think it would be much better for the record, rather than a statement of the law, if you would get the consul in Shanghai, China, to send to us authentic official statements showing the differences between the opportunities of Americans, Englishmen, Japanese, and Frenchmen in that territory? Now, if you will do that that is official, and we have somebody to go back to in case he makes a misrepresentation.

Mr. DYER. I will say, Mr. Chairman, that that is my intention, and has been, and I did not expect to come before the committee at this time on this question. We were waiting until we were in better shape as to the legislation in my own committee. Due to Mr. Arnold being here this morning, and it being the only opportunity we will have of hearing him, because he will soon return to China, and since he is the head of the American Chamber of Commerce in Shanghai, I wanted him to have the privilege of appearing before the committee. But I will be able to get you all the information you desire and lay it before the committee in concise form, so that you will thoroughly understand it. If you will permit me, I will leave with the committee a copy of some hearings that I held in China last summer upon this question, including among them one from the United States commercial attaché over there, another one from the American consul general over there, and business men and others connected with the Chinese Government.

Mr. TIMBERLAKE. The question asked by Mr. Garner as to what taxes prevail in China would not be found in those documents.

Mr. DYER. It will be stated in effect what they are, but as I understand Mr. Garner, he would like to have copies of the laws themselves.

Mr. GARNER. Well, Mr. Dyer, we want accurate information, and so far there has been no accurate information as to the difference in the opportunities of an American merchant in Shanghai and an English merchant and a Japanese merchant and a French merchant. That is what we want to know. If Congress is going to undertake to legislate in consideration of the handicap, if they have any over there, they have got to know what the handicap is.

Mr. ARNOLD. That is our purpose, to make it plain before the committee exactly what it is, and in effect it is as I have stated, that Americans pay taxes doing business in China, purely business in China, to the American Government on the American companies which they have over there, chartered under various States, the same taxes that they would pay if they were doing business here; whereas citizens of Great Britain and Japan and other countries doing business over in China, under their law pay no taxes at all to their home Governments, making competition between our own people and other nationals unfair and to the injury and detriment of our own people, and it injures American trade.

Mr. DICKINSON. If the excess-profits tax is repealed, then the major relief desired will come to those people.

Mr. ARNOLD. That is the only question at issue, so far as we would bring it to this committee, to give to our people the same rights as other nationals have.

(Whereupon the committee proceeded to other business.)

ADDENDA.

[H. R. 7204, Sixty-sixth Congress, first session.]

A BILL To provide for the incorporation of certain companies engaged in foreign trade.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a corporation may be formed for engaging in any lawful enterprise in foreign countries or noncontiguous territories of the United States of America, or in localities in which the United States of America exercises extraterritorial jurisdiction.

SEC. 2. That any number of persons, not less than three, a majority of whom shall be citizens of the United States of America, desiring to become incorpo-

rated under this act, shall subscribe and acknowledge articles of incorporation, which must contain: (1) The name of the corporation, which shall end with the legend "Federal Inc. U. S. A." (The use of which legend as the part of the name of any firm, corporation, or association engaged in interstate or foreign commerce and not chartered under this act, is hereby prohibited); (2) the location of its principal office and the place where its principal business is to be transacted; (3) the purpose for which it is formed; (4) the amount of its capital stock and the number of shares into which it is divided.

SEC. 3. That articles of incorporation shall be acknowledged before a Federal or State officer authorized to administer an oath, the form of which acknowledgement shall conform to the requirements of the place where it is taken.

Articles of incorporation shall be filed with the Secretary of Commerce, who shall record them and shall also record certificates relating to the corporation thereafter filed with him. In the case of corporations to be formed in noncontiguous territories of the United States of America or in localities in which the United States of America exercises extraterritorial jurisdiction, the articles of incorporation shall be filed in duplicate with the clerk of the highest court of the United States of America in the respective territory or locality, who shall submit them to the Secretary of Commerce, and on approval by him shall record them and shall also record certificates relating to the corporation thereafter filed with him.

SEC. 4. That upon filling articles of incorporation the persons who subscribe them, their associates, successors, and assigns, by the name and style provided therein, shall be a body corporate with succession, power to sue and be sued in any court of law or equity of the United States, or of the various States and Territories, including the District of Columbia or of any State or Territory in which the United States of America enjoys sovereignty, or in the courts of any foreign country, or in the courts of the United States of America in any country in which the United States of America has extraterritorial jurisdiction, contract and be contracted with; also, unless specially limited, to acquire and hold all property, real or personal, necessary to effect the object for which it is created, and at pleasure convey it in conformity with its regulations and the laws of the country in which it is located. Such corporation also may make, use, and at will alter a common seal, and do all other acts needful to accomplish the purposes of its organization.

SEC. 5. That the Secretary of Commerce or other recording officer named in section 3 shall not file or record any articles of incorporation wherein the corporate name is likely to mislead the public as to the nature or purpose of the business its charter authorizes, nor if such name is that of an existing corporation or so similar thereto as to be likely to mislead the public, unless the written consent of the existing corporation, signed by its president and secretary, be filed with such articles. Wherever, after articles of incorporation have been filed or recorded by the Secretary of Commerce, and it shall then appear that the corporate name is that of an earlier-formed corporation, or so similar thereto as to be likely to mislead the public, the Secretary of Commerce is authorized to require a change of name, unless the written consent of the earlier-formed corporation is obtained and filed or recorded.

SEC. 6. That a copy of the articles of incorporation so filed and duly certified by the Secretary of Commerce or other recording officer shall be prima facie evidence of the existence of the corporation therein named.

SEC. 7. That the persons named in the articles of incorporation under this act, or a majority of them, shall order books to be opened for subscriptions to the capital stock of the corporation at such time or times and place or places as they deem expedient. A majority of the voting stock shall at all times be owned by citizens of the United States of America.

SEC. 8. That such persons shall give at least thirty days' notice of the times and places of opening such books of subscription, by publication in a newspaper published or generally circulated in the place or places where they are to be opened, and also by writing to each stockholder at his address shown on the books of the company. Such notice, however, may be waived in writing by all the incorporators, but the waiver shall be entered or copied in the corporate records.

SEC. 9. That at the time of making a subscription to the capital stock of a corporation 20 per centum of each share subscribed for shall be payable. The residue shall be paid in such installments, at such times and places, and to such persons as the directors of the corporation require.

SEC. 10. That when 20 per centum of the capital stock is subscribed the subscribers to the articles of incorporation, or a majority of them, at once shall so certify in writing to the Secretary of Commerce or other recording officer with whom articles have been previously filed.

SEC. 11. That as soon as such certificate is made and filed with the Secretary of Commerce or other recording officer, the signers thereto shall give notice to the stockholders, as provided in section 8 hereof, to meet at such time and place as the notice designates for the purpose of choosing not less than five directors, to continue in office until the time fixed for the annual election and until their successors are elected and qualified. But if all the subscribers to the capital stock are present in person or by proxy, such notice may be waived by them in writing.

SEC. 12. That at the time and place appointed directors shall be chosen by ballot, by the stockholders who attend, either in person or by lawful proxies. At such and all other elections of directors the election shall be by ballot, and each stockholder shall be entitled to as many votes as he owns shares of stock in the company, and the persons receiving the greatest number of votes shall be elected directors. Directors shall not be elected in any other manner. No person shall vote on a share of stock on which an installment is due and unpaid.

SEC. 13. That at such first election the subscribers of the articles of incorporation present, or any other persons chosen by the stockholders present, shall be inspectors of election, certify what persons are elected directors, and appoint the time and place for holding their first meeting.

SEC. 14. That before every meeting held for the election of directors, or for the determination of any question, by the stockholders of a corporation, or by the subscribers to its stock, or by its creditors and stockholders for its reorganization, the officer or agent of the corporation having charge of the transfer of its stock, under oath must make out a list of its stockholders, showing the number and classes of shares held by each, as shown by its books, on the date fixed for closing the stock transfers before its meetings; or if no time be fixed therefor, then at the hour of noon on the tenth day prior to the date of such meeting. Such list shall be delivered to the inspectors of the meeting and be prima facie evidence of the ownership of its stock. In case good cause is shown for the absence of such list the inspectors shall ascertain the ownership of stock by the corporation books, stock certificates, or other proof.

SEC. 15. That the inspectors so appointed, or if none be appointed, then those selected by the meeting, shall receive and count the votes cast at such meeting, or at any adjournment thereof, either upon an election or for the decision of any question to be decided by vote, and determine the result. Their certificate shall be prima facie evidence thereof.

SEC. 16. That the corporate powers, business, and property of corporations formed under the provisions of this act shall be exercised, conducted, and controlled by the board of directors.

SEC. 17. That a majority of such directors must be citizens of the United States. All directors and executive officers shall be holders of stock of the company for which they are chosen, in an amount to be fixed by the by-laws.

SEC. 18. That when the office of director becomes vacant the board of directors may fill it for the unexpired term as provided for by the by-laws.

SEC. 19. That as soon thereafter as is convenient the board of directors chosen at any election shall select one of their number to be chairman thereof, and unless the regulations of the body otherwise provide for the election of a president and such officers, also appoint a secretary and treasurer of the corporation and such other officers as may be necessary.

SEC. 20. That by a vote of a majority of its stock, at a regular meeting of a corporation organized under the provisions of this act, it may increase the number of its directors to such number as is deemed advisable. In like manner at any time the number of directors can be reduced to not less than five. At a special meeting of stockholders also called and of which notice was given as provided for the election of directors, by vote of a majority of its stock, the increase in the number of directors may be made. Those elected shall hold their offices until the next annual election for directors and until their successors are elected and qualified.

SEC. 21. That a corporation organized under the provisions of this act must have a capital stock, which may consist of common and preferred or common only; but at no time shall the amount of preferred stock at par value exceed two-thirds of the actual capital paid in in cash or property.

SEC. 22. That when the capital stock is to be both common and preferred, it may be provided in the articles of incorporation that the holders of the preferred stock shall be entitled to yearly dividends of not more than 8 per centum, payable quarterly, half-yearly, or yearly, out of the surplus profits of the company each year in preference to all other stockholders. Such dividends also may be made cumulative.

SEC. 23. That a corporation issuing both common and preferred stock may create designations, preferences, and voting powers, or restrictions, or qualifications thereof in the certificate of incorporation, and if desired, preferred stock may be made subject to redemption at not less than par after a fixed time and at a set price, to be expressed in the stock certificates thereof.

SEC. 24. That should any corporation organized under the provisions of this act become insolvent, no holder of preferred stock shall be liable for its debts until after the remedy against the common-stock holders upon their liability as hereinafter provided, has been exhausted, and then only for such amount as remains unpaid. Such liability in no event shall exceed that fixed by this act for the common stock of such corporation.

SEC. 25. That upon the insolvency or dissolution of any corporation organized under the provisions of this act the holders of preferred stock shall be entitled to receive from the assets of the corporation remaining after paying its liabilities the full payment of its par value before anything is paid to the common stock.

SEC. 26. That the directors of such corporation, when organized, shall cause to be kept a record of all stock subscribed and transferred, and its secretary shall register all subscriptions and transfers of stock. For that purpose a book shall be kept, and when a certificate of stock is assigned and delivered by a stockholder the assignee thereof may have it duly transferred therein by such officer, who at the same time shall enroll also the name of the assignee as a stockholder. The books and records of all corporations organized under the provisions of this act at all reasonable times shall be open to the inspection of every stockholder.

SEC. 27. That title to a certificate and to the shares represented thereby can be transferred only.

(1) By delivery of the certificate, indorsed either in blank or to a specified person by the person appearing by the certificate to be the owner of the shares represented thereby, or

(2) By delivery of the certificate and a separate document containing a written assignment of the certificate or a power of attorney to sell, assign, or transfer the same or the shares represented thereby, signed by the person appearing in the certificate to be the owner of shares represented thereby. Such assignment or power of attorney may be either in blank or to a specified person.

SEC. 28. That nothing in this act shall be construed as enlarging the powers of an infant or other persons lacking full legal capacity, or of a trustee, executor, or administrator, or other fiduciary, to make a valid indorsement, assignment, or power of attorney.

SEC. 29. That nothing in this act shall be construed as forbidding a corporation—

(1) To recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends and to vote as such owner; or

(2) To hold liable for calls and assessments a person registered on its books as the owner of shares.

SEC. 30. That there shall be no lien in favor of the corporation upon the shares represented by a certificate issued by it, and there shall be no restriction upon the transfer of shares so represented by virtue of any by-laws or otherwise, unless the right of the corporation to such lien or the restriction is stated upon the certificate.

SEC. 31. That if an installment on stock is unpaid for thirty days after the time it was to be paid, whether the stock is held by the subscriber, an assignee, or transferee, it may be collected by suit, or the directors may sell such stock for the installment then due.

SEC. 32. That before the directors can sell such stock they shall give thirty days' notice of the time and place of sale, in some newspaper in general circulation of the place or at the place where the delinquent holder resided when he subscribed for it or became such assignee or transferee, or of his actual residence at the time of sale.

SEC. 33. That when a sale of such stock is made, if after paying from its proceeds the amount due on the stock a balance remains, the same shall on demand be paid to the owner. But if such proceeds fail fully to pay such installment, any balance may be recovered by action against the subscriber, assignee, or transferee.

SEC. 34. That a corporation organized under the provisions of this act may purchase, or otherwise acquire, and hold shares of stock in other kindred but not competing corporations. This shall not authorize the formation of a trust or combination for the purpose of restricting trade or competition.

SEC. 35. That every corporation organized under the provisions of this act annually shall make a statement of its financial conditions, setting forth its assets and liabilities, and file the same with the Secretary of Commerce or other recording officer and furnish to each stockholder a true copy thereof.

SEC. 36. That the stockholders of a corporation organized under the provisions of this act shall be severally and individually liable to the creditors of such corporation for the unpaid amount due upon the subscription for stock held by them, respectively, for all debts and contracts made by such corporation, until the whole amount of capital stock fixed and limited by such corporation shall have been paid in.

SEC. 37. That an action upon the liability of the stockholders of such corporation under the next preceding section can only be brought within two years after the debt or obligation shall become enforceable against the stockholders.

SEC. 38. That the term "stockholder" as used in the next preceding sections, shall apply not only to persons who appear by the books of the corporation to be such, but also to equitable owners of stock, although on the books of the corporation it appears in the name of another person.

SEC. 39. That after the original capital stock of a corporation organized under the provisions of this act is fully subscribed for, and an installment of 20 per centum on each share of the stock has been paid thereon, such corporation may increase its capital stock or the number of shares into which it is divided prior to organization by the unanimous written consent of all original subscribers. After organization the increase may be made by a vote of the holders of a majority of its stock, at a meeting called by a majority of its directors, at least sixty days' notice of the time, place, and object of which has been given by publication in some newspaper of general circulation and by letter addressed to each stockholder whose place of residence is known. Or the stock may be increased at a meeting of the stockholders at which all are present in person or by proxy and waive in writing such notice by publication or letter, and also agree in writing to such increase, naming the amount thereof to which they agree. A certificate of such action shall be filed with the Secretary of Commerce or other recording officer named in section 3.

SEC. 40. That upon the assent in writing of the stockholders of a corporation, organized under the provisions of this act, representing at least three-fourths of its capital stock, to increase the capital stock it may issue and dispose of preferred stock in the manner provided therefor. Upon the increase of stock, a certificate shall be filed with the Secretary of Commerce or other recording officer.

SEC. 41. That upon the assent in writing of the persons in whose names a majority of the shares of the capital stock of a corporation organized under the provisions of this act stands on its books, the board of directors of such corporation may reduce the amount of its capital stock and the nominal valuation of all the shares thereof, and issue certificates therefor. The rights of creditors shall not be affected by such reduction in the amount of such capital stock, and a certificate of such action shall be filed with the Secretary of Commerce or other recording officer.

SEC. 42. That the directors of a corporation organized under the provisions of this act may adopt a code of by-laws for their government, the laws of the country in which its principal office is located, and may change such by-laws at pleasure.

SEC. 43. That the by-laws for the government of corporations organized under the provisions of this act may be adopted or changed by the assent thereto, in writing, of the holders of two-thirds of the stock, or by a majority of the stockholders present at a meeting held for that purpose, notice of which has been given personally to each member or stockholder, or by publication in some newspaper of general circulation in the place where the head office of the corporation is located.

SEC. 44. That when no other provision is especially made, a corporation organized under the provisions of this act by its by-laws may provide—

(1) The time, place, and manner of calling and conducting its meetings.

(2) The number of stockholders or members constituting a quorum.
(3) The time of the annual election for directors and other officers, and the manner of giving notice thereof.
(4) The duties and compensation of directors and other officers.
(5) The manner of election, or appointment, and the tenure of office of all officers other than the directors.

SEC. 45. That a corporation organized under the provisions of this act may borrow money in any sum not exceeding the amount of its capital stock, issue its notes or coupon or registered bonds therefor, bearing any legal rate of interest, and secure their payment by a mortgage of its property, real or personal, or both.

SEC. 46. That a mortgage of real and personal property made by a corporation organized under the provisions of this act shall be duly recorded in the office of the recorder of deeds or other proper officer at each place in which the real or personal property mortgaged is situated or employed, and a certified copy of such mortgage shall be filed with the Secretary of Commerce or other recording officer.

SEC. 47. That a mortgage recorded with the recorder of deeds or other proper officer, as provided for in the preceding section, shall be a good and sufficient lien from the date of its filing for record where it is recorded upon the personal as well as the real property of such corporation.

SEC. 48. That a corporation organized under the provisions of this act which lawfully has issued registered or coupon bonds, upon the request of a holder thereof, may change such registered into coupon bonds, or coupon into registered bonds, either by substitution or by proper indorsement thereon. All liens, securities, and rights which existed on or accrued to such original bonds shall be and continue on and to such substituted or indorsed bonds.

SEC. 49. That no corporation organized under the provisions of this act shall sell its entire property and assets to any person, persons, partnerships, associations, or corporation, whether organized for the same or similar purposes or otherwise, unless three-fourths of the directors of such corporation authorize the execution of an agreement therefor prescribing the terms, considerations, and conditions thereof. The considerations may be money, stock, bonds, or other instruments for the payment of money, or any valuable consideration.

SEC. 50. That the agreement provided for in the preceding sections shall be submitted to the stockholders of the corporation at a meeting called for the purpose, sixty days' notice of the time and place of holding which, and the object thereof, shall be given by registered letter containing a written or printed notice addressed to each of the persons in whose names the stock of the corporation stands on its books. But when all the stockholders are present at such meeting in person or by proxy notice may be waived in writing.

SEC. 51. That at such meeting of the stockholders the agreement of the directors shall be considered and a vote by ballot taken for its adoption or rejection. For each share of stock on which all the installments called for by the board of directors have been paid the holder thereof shall be entitled to one vote. The ballots must be cast in person or by proxy, and if three-fourths of all the votes cast at the meeting be for the adoption of the agreement it shall be valid and binding on such corporation. Upon its adoption the officers of the corporation shall execute and deliver to the purchaser good and sufficient deeds and transfers of all the property and assets of the corporation upon the terms and conditions in the agreement provided.

SEC. 52. That a sale of its entire property by a corporation organized under the provisions of this act, as hereinbefore authorized, shall not be made for the formation of or to a trust or combination for the purpose of restricting trade or preventing competition.

SEC. 53. That a corporation organized under the provisions of this act may amend its articles of incorporation as follows:

First. So as to change its corporate name, but not to one already appropriated or to one likely to mislead the public.

Second. So as to change the place where it is to be located or its principal business transacted.

Third. So as to modify, enlarge, or diminish the objects or purposes for which it is formed.

Fourth. So as to add to them anything omitted from or which lawfully might have been provided for originally in such articles. But the capital stock of such corporation shall not be increased or diminished by such amendment, nor the purpose of its original organization substantially changed.

SEC. 54. That amendments to articles of incorporation may be made at any meeting of the stockholders thereof, of which, and of the business to come before it, thirty days' notice has been given by a majority of the directors in a newspaper published and of general circulation at the place where the corporation's principal place of business is located, and by a vote of the owners of at least three-fifths of its capital stock then subscribed.

SEC. 55. That when thus adopted, a copy of such amendment, with a certificate thereto affixed, stating the fact and date of its adoption, that such copy is a true copy thereof, signed by the president and secretary of the corporation, sealed with its seal, shall be filed with the Secretary of Commerce.

SEC. 56. That amendments to articles of incorporation shall not take effect until filed for record with the Secretary of Commerce or other recording officer, nor unless it be waived, as provided in the next section, until the corporation gives notice of them, in some newspaper of general circulation in the place where the principal office or business is located, for three consecutive weeks.

SEC. 57. That all notices required by the preceding section in such proceedings to amend the articles of incorporation may be waived when the holders of all the capital stock of a corporation consent thereto in writing.

SEC. 58. That directors of a corporation organized under the provisions of this act shall not declare dividends except from surplus profits arising from the business of the corporation.

SEC. 59. That in order to ascertain the surplus profits from which a dividend may be made, in the account of profit and loss there shall be charged and deducted from the actual profits—

First. All ordinary and extraordinary expenses, paid or incurred, in managing the affairs and transacting the business of the corporation.

Second. Interest paid, or then due or accrued, on debts it owes.

Third. All losses of the corporation. In computing its losses, debts owing to it which have been due without prosecution, or interest paid thereon, for more than one year, or upon which judgment was recovered, but has been more than two years unsatisfied, and on which also for that period no interest was paid shall be included.

SEC. 60. That when all the capital stock of a corporation has not been actually paid in the corporation shall not advertise the amount of authorized capital stock without also stating the amount actually paid in, nor shall a corporation advertise a greater dividend than has actually been earned and credited or paid to its stockholders.

SEC. 61. That every director of such a corporation who violates or is concerned in violating any provisions of the three preceding sections hereof shall be personally liable to the creditors and stockholders of the said corporation for any loss which thereby they respectively sustain.

SEC. 62. That every corporation organized under the provisions of this act shall file an annual report with the Secretary of Commerce or other recording officer during the month of January, in such form as the Secretary of Commerce may prescribe. This report shall be accompanied by an affidavit in such form as the Secretary of Commerce may prescribe, subscribed and sworn to by an officer of the corporation having knowledge of the facts therein contained.

SEC. 63. That upon the dissolution of a corporation organized under the provisions of this act, and unless other persons be appointed by the stockholders, the directors of the affairs of such corporation shall be the trustees of the creditors and stockholders thereof, and have full power to settle its affairs, collect, and pay outstanding debts, and divide among the stockholders the money and other property remaining, in proportion to the stock of each stockholder paid up, after the payment of debts and other necessary expenses.

SEC. 64. That if all the stockholders present at such meeting in person or by proxy decide to surrender and abandon its corporate authority the corporation shall be abandoned and dissolved upon the filing of a certificate of the abandonment or dissolution with the Secretary of Commerce.

SEC. 65. That when a majority of the directors or other officers having the management of a corporation organized under the provisions of this act which has completely closed its business and paid all the debts and liabilities incurred by it desire to surrender its corporate authority and franchises, they or the president of such board of directors may call a meeting of the stockholders at such time or place as he or they designate, by publication for four weeks in some newspaper published and of general circulation of the country wherein the principal office of the corporation is located and by written notices addressed

to each of the stockholders whose residence is known of the object, time, and place of the meeting.

SEC. 66. That the persons so constituted trustees may sue for and recover the debts and property of the dissolved corporation by the name of trustees of the corporation, describing it by its corporate name, and jointly and severally they shall be responsible to the creditors and stockholders of the corporation to the extent of its property and effects coming into their hands. Such trustees may be made or become parties to any action by or against the corporation. All liens or judgments existing at the time of the dissolution, either in favor of or against the corporation, shall continue in force as if the dissolution had not taken place.

SEC. 67. That no corporation created under the provisions of this act shall by any implication or construction be deemed to possess the power of carrying on the business of discounting bills, notes, or other evidences of debt, of receiving deposits of money, or foreign coins, or buying and selling bills of exchange, or of issuing bills, notes, or other evidences of debt for circulation as money: *Provided, however,* That corporations created or to be created under the provisions of this act to buy, sell, and otherwise deal in notes (not including the discounting of notes), open accounts, and other similar evidences of debt (not including bills of exchange), or to loan money and to take notes, open accounts, and other similar evidences of debt as collateral security therefor, shall not be construed or considered to be within the prohibition of this section; and corporations created or to be created for such purposes may charge such amounts as may be agreed upon by the respective parties.

SEC. 68. That corporations created under this act shall be exempt from all Federal tax of any nature whatever, except the fees for filing the articles of incorporation and such other fees as may be prescribed by the Secretary of Commerce under the provisions of this act.

SEC. 69. That in the case of corporations formed under this act in localities in which the United States of America exercises extraterritorial jurisdiction, at least 51 per centum of the voting stock of the corporation shall at all times be owned by citizens of the United States of America.

Part 2

Taxation of American Companies in China

HEARINGS

BEFORE THE

COMMITTEE ON WAYS AND MEANS

HOUSE OF REPRESENTATIVES

ON THE

Tax Features of H. R. 7204

A BILL TO PROVIDE FOR THE INCORPORATION OF CERTAIN COMPANIES ENGAGED IN FOREIGN TRADE

MONDAY, JANUARY 17, 1921

PART 2

WASHINGTON
GOVERNMENT PRINTING OFFICE
1921

COMMITTEE ON WAYS AND MEANS.

HOUSE OF REPRESENTATIVES.

SIXTY-SIXTH CONGRESS, THIRD SESSION.

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TAXATION OF AMERICAN COMPANIES IN CHINA.

COMMITTEE ON WAYS AND MEANS,
HOUSE OF REPRESENTATIVES,
Monday, January 17, 1921.

(The committee met at 1.30 o'clock p. m. and after hearing witnesses on tariff matters proceeded as follows:)

STATEMENT OF HON. L. C. DYER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSOURI.

The CHAIRMAN. Now, gentlemen, there is a gentleman here whom Mr. Dyer wants to address the committee for a few minutes, and we will be glad to hear him.

Mr. DYER. Mr. Chairman and gentlemen, I desire you to hear a gentleman, an American engaged in business in China, who has been in China for 26 years, and who has spent all his life in the Orient.

We have pending in the Judiciary Committee, as I have stated to you gentlemen before, a bill to grant Federal incorporation to Americans to do business in China. One feature of the bill, which we have had in it, but which we have taken out because we felt that the Committee on Ways and Means should act upon it, is the taxation feature. We find it necessary, in order that Americans may meet competition in China, that they be given the same consideration that other countries give their nationals, and that is an exemption from corporation taxes.

I want you to hear, if you gentlemen will at this time, Mr. Carl L. Seitz, of Shanghai, who comes here in the interest of this legislation, the accredited representative of all the Americans engaged in business in China.

The CHAIRMAN. We will hear him right now if he will come forward.

STATEMENT OF MR. CARL L. SEITZ.

Mr. SEITZ. Mr. Chairman and gentlemen, I thank you for the honor you are giving me of being able to address you this afternoon on such short notice. I have come from China in the interest of the American merchant in that country, and the American merchant there needs help. Mr. Dyer was in Shanghai last summer, and at that time took great interest in this bill (H. R. 7204), which we hope will be passed shortly, providing for the Federal incorporation of American companies in China.

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The primary and most important point in the bill is connected with income-tax features, and that is the one that will be the outstanding factor as to whether American business is going to exist in China or whether it is not.

My father went to China in the early sixties, I being born and raised out there. Business amongst Americans in China died in the eighties, when American shipping ceased to carry American goods, and when I grew up in business in China I grew up in the British business. I have worked since 1895 in British companies, and I know their systems and their methods and the laws under which they operate.

In the years before the war there were only three or four American houses actually doing a real business in China. There were a number of small concerns that did not amount to a row of pins, but I mean decent, good-sized business houses.

Mr. HULL. What kind of business were they doing?

Mr. SEITZ. Import, export, and handling of machinery and factory installations.

During the war Europe could not supply materials or goods in China and American business sprang up. It was first built up by British and foreign houses in China buying goods from America. Then the American manufacturer took an interest in the Chinese trade and sent his representatives over there to endeavor to build up their agencies and trade, as well as business and trade for his factory resources in this country.

Mr. HULL. If I understand the situation, the British Government exempts from income and profit taxation all profits that accrue to an English concern doing business in China and residing in China and not returning those profits to England?

Mr. SEITZ. Yes. There has been some confusion in the evidence given before this committee by Mr. H. H. Arnold, who did not make his points clearly. There are several forms of British companies operating in the Orient. There is the British company, which has its main house in England. It may have a branch house in China, and such branch house would remit its profits annually to England, and such company would pay taxes, the full income tax, the same as the British company located in England.

Then there is the Hongkong British company. Hongkong is a British colony on the China coast, and they got out laws which were devised and framed for business in China and which were the laws under which practically all the British corporations operating in China up to 1914 operated and worked. Then when the war started there was some question as to whether Hongkong might or might not levy a local colonial income tax on Hongkong operations, and in order to assure the China trade and to relieve the British corporations working there from any question of being taxed they framed another law, known as the order in council of 1915, which came into force on the 1st of January, 1916. This order in council provided that companies whose head offices or whose principal business was conducted in China itself should come under the British Shanghai register, and a registrar was appointed at the British consulate in Shanghai to register such companies there. On the other hand, all companies whose business lay within Hongkong exclusively had to register in Hongkong and have their head offices there. So we have the difference between the Hongkong British company and the China British company.

Income tax was not, however, imposed on Hongkong companies as they thought it might be, and we were informed in China that the British-China companies would never be subject to income tax, because the British had learned in past experience that there should be no taxation without representation, and as the British merchant in China has no representation he could not be taxed.

Mr. HULL. Then it is a fact that where a company is located abroad and has no head office or main office of any kind of any importance at home, and resides there indefinitely and the profits accrue there, they do not undertake to tax them in their home Government?

Mr. SEITZ. I am not able to give an answer to that definitely, because that would alter with conditions in different territories. There have been difficulties of that kind, with duplicate taxation, where they had colonial taxation, as in India and in Australia, where the actual ownership of the companies was vested in British shareholders located in England, with their head office as a holding company in England, and then they imposed English taxation after the colonial taxation had already been imposed. There was quite some difficulty about that, and that was remedied last year by some new orders in council being passed to put that right. I believe you are correct in what you have just said about that provision having been incorporated in the King's ordinances that there should be no taxation where the money is made entirely outside of the British jurisdiction.

Mr. HULL. And where the operator lives and resides?

Mr. SEITZ. Yes.

Mr. HULL. With no office anywhere in England?

Mr. SEITZ. Yes. There was some such order, but I am not able to call to recollection what that was. I have here a book with the complete orders in council in connection with British foreign-trade operations. It will be in there somewhere.

Mr. HULL. You will find that somewhere in the amendments to the British income-tax law.

Mr. SEITZ. Yes; it will probably be in that section. In China the British merchant is entirely free from income taxation on his operations in China. The American merchant has to incorporate under some State charter, therefore he comes under the jurisdiction of the State and Federal laws in connection with taxation exactly as if the company were operated at home.

Mr. HULL. He has to incorporate back home in order to get the benefit of certain protection?

Mr. SEITZ. Yes, sir. And that condition, for instance, prevents the getting together of Chinese and Americans in business in China, and that is the only solid basis on which the business of the future can be built up. We have that visualized just now in the clearest possible way in the existing condition of affairs in China in trade. Conditions are bad there. All firms have suffered to a more or less degree, like all the rest of the world, but to-day the position is this, that so far as I have been able to learn not a single British house has gone down, not a single British house is quitting business, not a single British house has had losses that amount to anything serious. On the other hand we have American houses practically all in difficulties. A prominent banker, on the last day when I was leaving Shanghai,

was talking with me, and I said, "Well, I suppose two out of every five American firms will be in a bad way when you clean up at the end of the year." He said, "No, Seitz, you are wrong; it will be nine out of ten."

We have seen one of the biggest American companies there, the Grace-China company quitting, closing down its offices in China, and unless we act rapidly and get this Federal incorporation act straightened out, most of the American business men in China will have left, and once they leave and we create in the minds of the Chinese the impression of want of stability, it will be a hard thing to get back there again and start in once more. There have been millions and millions of dollars spent in China building up American business, and building up our Chinese trade. We should do everything possible to further that trade, so that the home manufacturer can sell goods in China. Keeping our industries supported.

To show you how this income-tax feature handicaps American trade, I will give you an example of how British companies stand. A Chinese will come down from the interior of the gentry class who own big areas of the farm land with a proposal, say to put in a cotton mill, because they can grow fine cotton there, or a flour mill for wheat. We will take a cotton mill as an illustration. The Chinaman will go to a British house, and will explain that he has, say, $200,000 to invest in a cotton mill. The British house will take up the proposition with him, get up the plans for a small cotton mill, and then they will even take some capital themselves, and they will go out and get some more put in by the public. Then they will organize a company under the Hongkong British-China ordinances and start business. They will buy the machinery from England. They will buy the increases in machinery from England, as the business develops. All the supplies for the building and everything that goes to the running of the mill, the staff that goes into the mill, the foreman, the manager, the whole system will be British. And, furthermore, the British firm which organizes the company becomes the general agent or manager under their custom of working and receives ten or fifteen thousand taels a year for doing that. That is, they just lend their support as agents and general managers. They have a secretary, that they pay a few hundred dollars a month. The balance is all just clover and cream, which they can apply to their overhead in their ordinary work.

There are British businesses in China that have 75 per cent of their business which is on that basis. Nearly every British company in that country of any standing at all has at least one agency of that kind. Amongst the American firms there is not a one that I know of that has such an agency, because, in the first place, Chinese do not go to American firms to organize. We have not got the incorporation laws to suit. In the second place, the Chinaman is not going to start in to put his money in with American merchants making profits in China, with investments in China to work on Chinese products, and then pay a part of these profits over to American in the form of an income tax. He can not see that when he can go next door, to British friends, and pay nothing.

The result is that whereas the British firms have, maybe, 75 per cent of this gilt-edged trade in this agency work, they have only a small part of their business in what is called the indent trade, which

is a risky class of trade, where a man comes in and orders, as a speculation, say, 500 or 1,000 tons of iron. When the market is all right, the Chinese will take delivery. If the market goes wrong and the buyer has not got the money, the firm has to carry the account. The Chinese often simply can not pay when losses are heavy. American firms, on the other hand, have none of this gilt-edged agency or corporation trade, but have 100 per cent of the risky indent business, where, when the bottom has dropped out of the market, they have to carry the loss if the Chinese buyer can not pay.

Mr. LONGWORTH. Do I understand you are seeking from the Judiciary Committee a Federal incorporation in place of State incorporation?

Mr. SEITZ. Yes, sir.

Mr. LONGWORTH. And that the American corporation that is doing business in China should be relieved of income tax on the business?

Mr. SEITZ. Yes.

Mr. HULL. As I understand it, over there that represents a case where somebody in America cuts all the holds loose and leaves here and goes over there to reside and do business?

Mr. SEITZ. That is it exactly.

Mr. HULL. And the concern is not controlled here nor directed here in any way, but it is conducted entirely by those who go over there and remain there and do business there?

Mr. SEITZ. That is about correct; but there could be cases where a group of, we will say, American manufacturing houses agree to incorporate a company to handle their interests in China, operate in China, and to sell their product in competition in China with the manufacturers of similar products of other nations. Such a corporation, framed and formed in China under American Federal incorporation, could then operate on the same footing as the British companies do, and could get the trade in the same way.

Mr. DICKINSON. I understand the British parent institution might be in Great Britain and have their branch houses in China?

Mr. SEITZ. Where the company has its head office in London and a branch office in China, and it remits the profits back to London, it pays income tax; but where a British manufacturer in England has a separate company in China, in which he may control the stock, and that company works in China exclusively and makes its profits there, then that corporation is not taxed; but, of course, the dividends of that corporation that are remitted to England would then be taxed in England.

Mr. DICKINSON. You want to be put on the same basis?

Mr. SEITZ. On the same basis exactly.

Mr. BACHARACH. In case that is not done, can you do business under the British jurisdiction? In other words, do you have equal rights with the Britisher himself in China?

Mr. SEITZ. We can form corporations under the British law by joining in with British interests, but we can not control the business.

Mr. BACHARACH. And your rights are not prejudiced in any way by reason of the fact that you are American?

Mr. SEITZ. They would become British companies.

Mr. BACHARACH. You would become British companies?

Mr. SEITZ. They would become British companies, and then the management, control, and directorate would have to be British.

Mr. BACHARACH. British citizens?

Mr. SEITZ. Yes, sir.

Mr. DYER. You might explain, Mr. Seitz, that that is the result of the order in council of 1919.

Mr. SEITZ. That is a result of the order in council of 1919.

Mr. DYER. And drove the American management away from those British companies.

Mr. SEITZ. Which came into force on the 1st of March, 1920. I was the general manager of the China Import & Export Lumber Co., a company in which there is a very large amount of American capital. It was a company that was established in 1901. I was one of the original promoters and helped build it up. An order in council came in last year, and I had to resign the management and turn the management over to a British firm.

Mr. DICKINSON. The trade relations and commerce between the United States and China is seriously affected by this condition?

Mr. SEITZ. Absolutely.

Mr. DICKINSON. And would be relieved if you can accomplish this?

Mr. SEITZ. If we can accomplish what we are asking for it would mean just this, that American trade in China would flourish. The American Government—the Treasury—might lose a little income from the profits which the merchants in China may make, but against that must be set off the enormous trade which we will undoubtedly do in China, because it is a coming country, and there are 450,000,000 people there who are beginning to use machinery, and using it well. I just heard one witness before you here say that the Chinese were very poor in the use of machinery. But he has not lived in China, as I have, and he has not employed the Chinese as I have. I have employed 5,000 men in that country. I run five sawmills there, and I have an interest in cotton mills and other industries all over that country, and they handle machinery wonderfully. My sawyers get $25 a month and my filers get $25 a month, and the work is wonderfully done.

Mr. OLDFIELD. How about this squeeze that we heard about?

Mr. SEITZ. It exists there all right, but is not so bad as sometimes stated.

Mr. DYER. Chinese laborers, mechanics, etc., are also employed in building ships, are they not?

Mr. SEITZ. Yes, sir. They are building ships for the American Government at Shanghai. They have big dock yards there. When I was a boy I used to travel in the interior of the country a great deal. They used no machinery then. To-day there is not a village that you can go to where there is not some mill machine puffing away, and nine times out of ten you will find they are American machines, because during the war these machines were bought at any kind of price from America because they could not get them from Europe.

There is, for instance, a town up in the interior, away from Shanghai, called Wusih, where there are three big cotton mills worth about $4,000,000 or $5,000,000. There are two big silk filatures. There are also two flour mills working to capacity all the time. Those mills are all working 24 hours per day under Chinese management, Chinese mechanical control, and absolutely Chinese throughout, and most of the machinery is American.

Mr. OLDFIELD. Chinese capital?

Mr. SEITZ. Chinese capital, with some foreign capital.

Chinese are good mechanics. You will find that in industrial plants in 50 different places in interior China, away from the coast where the ordinary tourist does not go. Our future in China lies in selling our machinery, and then selling our cotton and other products; and they will buy it, because they can not grow long-staple cotton there.

Mr. OLDFIELD. What kind of cotton do they grow?

Mr. SEITZ. Short staple; soft cotton.

Mr. DICKINSON. Are you filing a written statement along with your statement?

Mr. SEITZ. No; I have not prepared any. I have made a statement which is printed in a report which Mr. Dyer has handed me to-day of a hearing on this Federal incorporation bill at Shanghai, covering the whole proposition.

Mr. HULL. I have been giving some consideration to that question during the past year or two, and while I have not undertaken to work out in my own mind all the phases of it, I am inclined to the opinion that it is a matter that ought to be given serious consideration by this committee, as far as I am concerned, as one member of the committee.

Mr. DICKINSON. I feel the same way.

The CHAIRMAN. I would like to have had the full committee hear this statement. We have had our time very much taken up, and the only time we can hear you is when we have finished the last witness for the day. I am sorry there are only a few members who were able to remain to-day, but I would suggest to you that you prepare a brief on the matter, so that we can all read it and see it when we reach this question.

Mr. SEITZ. I would be very glad indeed to do that.

The CHAIRMAN. That might be best, because there are only two or three gentlemen of the committee present. The others were obliged to go.

(Mr. Seitz submitted the following:)

ADDITIONAL STATEMENT IN RE THE TAX EXEMPTION FEATURES OF H. R. 7204 FOR FEDERAL INCORPORATION OF COMPANIES ENGAGED IN FOREIGN TRADE.

The following additional statement is submitted on behalf of the American business interests of China as represented by the American Chamber of Commerce of China and the American Association of China:

Bill H. R. 7204 is to provide "A Federal law covering incorporation for companies in China, so that such companies will be recognized in foreign trade as 'American' companies," thereby helping to put American companies operating in China on an equal footing with trade competitors. British business predominates in China, being operated under the British Hongkong Co. ordinances which have been extended to cover operations of British companies throughout China under the extraterritorial jurisdiction privileges which foreign powers enjoy in China.

The essential necessity to complete the purpose of Federal incorporation bill (H. R. 7204) is to cover therein a provision exempting American companies incorporated thereunder from income taxation.

In America such taxes apply on all business. In China the American merchant alone is taxed. British merchants, as also French, Japanese, and Chinese, pay no income or excess-profits tax. Consequently, American business can not survive in active competition, and existing trade conditions in China show that relief is urgently necessary.

So long as this handicap exists, it is not possible for American business in China to interest Chinese capital in building up joint enterprises.

America has the goodwill of the Chinese, and, all things being equal, American and Chinese merchants will get together to build up trade between the two countries. Chinese merchants, however, will not make a sacrifice in joining with American enterprise under American law if the business is going to be taxed under the American income and excess-profits tax laws, thereby causing to be paid to the United States Treasury taxes on profits made purely and exclusively in China.

The Chinese merchant can do better by putting his money in with his British friends or with French or Japanese friends operating in China free from taxation, even if he must accept the drawback of having to purchase for joint industrial undertakings foreign machinery and equipment when he would prefer American machinery.

China possesses no adequate laws for control of Chinese corporations. Therefore it is customary in the building of industrial plants in China for Chinese capital to join with foreign capital in such development under some foreign corporation law. The existing favorable British laws induce Chinese to cooperate almost exclusively with British merchants in such enterprises. Companies are formed under the Hongkong ordinances free from taxation. In these companies the management and directorate are British, and the custom is for the management to be paid a substantial sum annually for its services. The control of the company being in British hands, it naturally follows that machinery employed in the factories is British; the supplies and equipment for the regular running of the works are British; the skilled staff of engineers and foremen are also British.

In some British firms as much as three-fourths of their business is based on such operations. No such development in working between Chinese and American merchants is possible, on account of the handicap in connection with income tax and excess profits tax laws which are applied on American trade operations in China.

If American shipping is to win on the seas it must be supported by American trade development in foreign countries, so as to provide cargoes for American ships to carry. China is on the verge of great industrial development, and America, with laws framed to meet competition on an equal footing, will undoubtedly have her fair share—possibly more than a fair share—in the trade possibilities offering.

In putting the American merchant in China on an equal footing with the British merchant in freedom from income and excess profits taxation, the direct result will be that America will, in cooperative working with China, sell to the Orient machinery and produce in large quantity. Profits accruing to our manufacturers in America and resulting benefits in the national balance of trade will be out of all proportion in increasing national prosperity compared with the small sacrifice by the United States Treasury in income taxation on the profits which American corporations in China may make.

NOTES ON INCOME TAXATION OF BRITISH, FRENCH, AND JAPANESE COMPANIES AS APPLYING IN CHINA.

There are three recognized forms of British company operation applying to trade in the Far East, viz:

1. A "British company" is generally accepted to mean a company with its head office in England, incorporated under the laws of Great Britain, and operating in China through a branch office there. Such a company is subject to British income tax on the profits earned by the branch in China and remitted to England. (NOTE.—Companies in China so operated are notably the Alfred Holt, or "Blue Funnel" steamship interests, the P. & O. S. S. Co., and the Chartered Bank of India, Australia, and China.)

2. A "Hongkong-China company" means a company incorporated under the Hongkong company's ordinances, which may carry on some part of its business within the territory of China, but is directed and controlled by a head office in the colony of Hongkong.

3. A "British-China company" means a company incorporated under the Hongkong company's ordinances doing business within the territory of China and registered with the registrar of British-China companies at Shanghai, where the head offices of such companies are usually located.

In the operation of a "Hongkong-China company" or of a "British-China company" there is no burden imposed in the form of income or excess-profits taxation. The only charge made by the British authorities is a fee to the registrar which is based on a sliding scale up to $300 annually.

Up to the 31st of December, 1915, all British companies operating in Hongkong or China were known as "Hongkong-China" companies. Apparently the possibility arose that the British colony of Hongkong might become subject to income taxation. It was then arranged by the British Government, in protection of British trade in China, to make a distinction between "Hongkong-China" companies and "British-China" companies. The principle involved was simply that while it would be justifiable to tax companies doing their principal business and having their head office in the colony of Hongkong it would not be policy to tax British companies operating solely in China, on the theory that such companies, having no representation, could not properly be made subject to taxation.

Regulations for the separation of "Hongkong-China" companies and "British-China" companies were published on the 17th of December, 1915, and came into force on the 1st of January, 1916.

Eventually income taxation was not enforced on "Hongkong-China" companies, so that to-day neither the "Hongkong-China" companies nor the "British-China" companies registered at Shanghai with the British registrar of companies there are taxed.

French companies in China are not taxed in trade there. No special laws seem to have been framed covering French incorporation of companies for operation in China, but it is positively known that under French consular regulations French companies do operate in China free from income or excess-profits taxation. Japanese companies operating in China are placed in the same position as the French companies, in that no special laws seem to exist giving such companies freedom from income taxation, but it is definitely known that Japanese companies do not pay taxes on their profits in China. In this connection Mr. Julean Arnold, commercial attaché to the American legation at Peking, makes a positive statement in his evidence given on August 8, 1920, at Shanghai, China, and published in "Hearings, Committee on the Judiciary, House of Representatives, on H. R. 7204, serial 13, part 2," page 39, paragraph 3, in which he states:

"The Japanese meet this situation, in order to encourage their nationals in trade and in other enterprise in China, by stipulating that in lieu of Government taxes Japanese corporations in business in China may expend the equivalent in purchases of real estate in that country."

In a hearing before the Committee on Ways and Means on the tax features of H. R. 7204, held on Friday, December 17, 1920, a request was made of Mr. H. H. Arnold, of Shanghai, China, who appeared before the committee, to give evidence that copies of laws be produced in proof that British, French, and Japanese corporations are free from income and excess-profits taxation on their operations in China. Copies of such laws can not be produced for the reason that no laws have ever been made imposing taxation on British, French, or Japanese companies in China; consequently, no enactments are in print removing such taxation.

C. L. SEITZ,
Special Delegate representing the American Chamber of Commerce of China and the American Association of China.

WASHINGTON, D. C., *January 17, 1921.*

(Whereupon, at 4.50 o'clock p. m., the committee adjourned.)

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